

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**DENISE COX**

**VS.**

**WAL-MART STORES TEXAS, LLC**

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**CIVIL ACTION NO.**

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**NOTICE OF REMOVAL**

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**TO THE HONORABLE UNITED STATES DISTRICT JUDGE:**

Defendant Wal-Mart Stores Texas, LLC, (“Walmart”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1332.

**I. INTRODUCTION**

1. Pursuant to 28 U.S.C. § 1441, *et seq.*, this civil action is removed from the 219<sup>th</sup> District Court of Collin County, Texas, where this matter was pending under Cause No. 219-04231-2022 in a matter styled *Denise Cox vs. Wal-Mart Stores Texas, LLC*. (the “State Court Action”).

**II. NATURE OF THE SUIT**

2. This is a premises liability lawsuit alleging claims of personal injury resulting from Defendant’s alleged actions or inactions. *Plaintiff’s Original Petition p. 2-3*.

3. Plaintiff Denise Cox alleges she was injured when she slipped and fell on a liquid substance while shopping at Defendant’s store located in Plano, Collin County, Texas. *Plaintiff’s Original Petition p. 2*.

4. Plaintiff brought her lawsuit against Walmart in the 219<sup>th</sup> District Court of Collin County, Texas. *See Plaintiff’s Original Petition p. 1*.

### III. TIMELINESS OF REMOVAL

5. Plaintiff commenced this lawsuit by filing her Original Petition on August 9, 2022. Defendant Walmart Inc. accepted service on August 10, 2022 through their agent, CT Corporation. This removal is timely because it is filed less than 30 days after Walmart was served. 28 U.S.C. § 1446.

### IV. BASIS FOR REMOVAL JURISDICTION

6. Removal is proper under 28 U.S.C. §§ 1441 and 1332 because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Plaintiff admits she is a citizen of Texas. *Plaintiff's Original Petition p. 2.*

8. Plaintiff sued and served Wal-Mart Stores Texas, LLC. Defendant Wal-Mart Stores Texas, LLC is now and was at the time of the filing of this action a Delaware Limited Liability Company with its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all its members. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Wal-Mart Real Estate Business Trust is the sole member of Wal-Mart Stores Texas LLC. Wal-Mart Real Estate Business Trust is a statutory business trust organized under the laws of Delaware with its principal place of business in Arkansas. The citizenship of a statutory trust is the citizenship of its members, which includes its shareholders. *Americold Realty Tr. V. Conagra Foods, Inc.*, 136 S. Ct. 1012, 106 (2016); *Bynane v. Bank of New York Mellon for CWMBS, Inc. Asset-Backed Certificates Series 2006-24*, 866 F.3d 351, 358 (5th Cir. 2017); *U.S. Bank Tr., N.A. v. Dupre*, 615CV0558LEKTWD, 2016 WL 5107123, at \*4 (N.D.N.Y. Sept. 20, 2016) (finding that a Delaware statutory trust “seems precisely like the type [of trust] considered by the Supreme Court in *Americold*”). The sole unit/shareholder of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co. Wal-Mart Property Co. is a Delaware corporation with its principal place of

business in Arkansas. Accordingly, for diversity purposes, Wal-Mart Stores Texas, LLC is a citizen of Delaware and Arkansas.

9. There is and has been at all times relevant to this Notice of Removal, complete diversity of citizenship between Plaintiff and Defendant.

10. The amount in controversy exceeds the jurisdictional requirement of \$75,000, exclusive of interest and costs. Plaintiff alleges she sustained bodily injuries. *See Plaintiff's Original Petition pp. 4-5*. Plaintiff seeks damages for alleged medical care and expenses past and future, pain and suffering past and future, mental anguish past and future, impairment past and future, disfigurement past and future, loss of earning capacity, and loss of enjoyment of life past and future. *Plaintiff's Original Petition p. 4-5*. Plaintiff pleads relief in excess of \$250,000. *Id. at p. 1*. The sum claimed by Plaintiff should control the evaluation of the amount in controversy. Facially, the pleadings, injuries and damages exceed \$75,000, exclusive of interest and costs.

11. In an effort to confirm the amount in controversy, Walmart sent correspondence to Plaintiff's counsel on August 23, 2022 requesting Plaintiff stipulate she is seeking damages less than \$75,000 in damages, exclusive of interest and costs. Plaintiff's counsel indicated she could not agree to the requested stipulation.

#### **V. THIS NOTICE IS PROCEDURALLY CORRECT**

12. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b), because Defendant is not a citizen of Texas, the state in which the action was brought. This action is removable to this Court and venue is proper because this United States District Court and the Eastern District of Texas embraces the place where the State Court Action was pending. 28 U.S.C. §§ 124(a)(1), 1441(a).

13. Walmart has attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81.1 as follows:

- A: Index of all documents filed in the State Court Action.
- B: Docket Sheet in the State Court Action.
- C: Copies of all process, pleadings and orders filed in State Court.
- D: State Court and Party Information;
- E: Signed Certificate of Interested Persons.

14. Walmart retains the right to supplement the jurisdictional allegations by affidavit, declaration, or otherwise should Plaintiff challenge the allegations in a motion to remand or other filing.

15. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to all parties and to the Clerk of the 219<sup>th</sup> District Court of Collin County, Texas.

16. Plaintiff has not demanded a jury trial in the State Court Action. Defendant has demanded a jury trial in the State Action.

17. Trial has not commenced in the 219<sup>th</sup> District Court.

## **V. CONCLUSION**

18. Since diversity jurisdiction exists over Plaintiff's claim as set forth in Plaintiff's Original Petition, Defendant desires and is entitled to remove the lawsuit filed in the 219<sup>th</sup> District Court of Collin County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division.

**WHEREFORE, PREMISES CONSIDERED**, Defendant Wal-Mart Stores Texas, LLC., pursuant to and in conformance with the statutory requirements, removes this action from the 219<sup>th</sup> District Court of Collin County, Texas, to this Court.

**Respectfully submitted,**

By: /s/ Stacy Hoffman Bruce

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify a true and correct copy of this document has been forwarded to the following counsel of record either by e-service, telefax, electronic mail, and/or regular U.S. mail on this 9<sup>th</sup> day of September, 2022:

Tesha L. Williams  
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/s/ Stacy Hoffman Bruce

**STACY HOFFMAN BRUCE**